

06-20-05

IFW

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

BURKART

Serial No.: 10/828,937

Filed: April 20, 2004

Atty. File No.: 4902-5-1

For: "FENCE POST ACCESSORY  
APPARATUS"**Mail Stop: Petitions**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450



Group Art Unit: 2754

Examiner: Not Yet Assigned

**AMENDMENT, PETITION AND  
FEE TO CORRECT INVENTORSHIP  
PURSUANT TO 37 CFR § 1.48(a)**

"EXPRESS MAIL" MAILING LABEL NUMBER: EV556790127US

DATE OF DEPOSIT: June 16, 2005I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING  
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE VIA  
"EXPRESS MAIL" ADDRESSED TO THE COMMISSIONER FOR  
PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.TYPED OR PRINTED NAME: Chasity C. RossumSIGNATURE: Chasity C. Rossum

Dear Sir:

This amendment and petition is to correct the incorrect original naming of inventors in the declaration executed on September 24, 2004 for the above-identified application, pursuant to 37 CFR § 1.48(a). Please add the following previously unnamed person as an inventor of the application:

Jeffrey G. Herion  
430 S. Bonnie Lane  
Watkins, Colorado 80137

Attached are:

1. a statement from Jeffrey G. Herion indicating that the error in inventorship occurred without deceptive intent on his part (37 CFR § 1.48(a)(1)); and
2. a declaration by each of the actual inventors as required by 37 CFR § 1.63 (37 CFR § 1.48(a)(2)).

Pursuant to 37 CFR § 1.17(i), a check in the amount of \$130.00 is enclosed (37 CFR § 1.48(a)(3)). The Commissioner is hereby authorized to charge our Deposit Account No. 19-1970 for any fee deficiencies associated with the filing of this paper.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Dennis J. Dupray  
Registration No. 46,299  
1560 Broadway, Suite 1200  
Denver, Colorado 80202  
(303) 863-9700

Date: June 16, 2005

J:\4902\5-1\To Be Filed\PET-01-corr inventorship.wpd

06/21/2005 AWONDAF1 00000011 10828937

01 FC:1464

130.00 OP



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

BURKART

Serial No.: 10/828,937

Filed: April 20, 2004

Atty. File No.: 4902-5-1

For: "FENCE POST ACCESSORY  
APPARATUS"

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

) Group Art Unit: 3679

)  
) Examiner: Not Yet Assigned

)  
) **STATEMENT UNDER**  
) **37 CFR § 1.48(a)(1)**

) "EXPRESS MAIL" MAILING LABEL NUMBER: **EV55679012745**

) DATE OF DEPOSIT: June 16, 2005

) I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING  
) DEPOSITED WITH THE UNITED STATES POSTAL SERVICE VIA  
) "EXPRESS MAIL" ADDRESSED TO THE COMMISSIONER FOR  
PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

TYPED OR PRINTED NAME: Chasity C. Rossum

SIGNATURE: Chasity C. Rossum

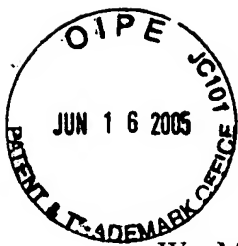
Dear Sir:

I, Jeffrey G. Herion, having an address at 430 S. Bonnie Lane, Watkins, Colorado 80137,  
hereby state as follows:

1. I believe I am an original, true and joint inventor of the subject matter claimed in  
U.S. Patent Application Serial No. 10/828,937, filed April 20, 2004, entitled  
"FENCE POST ACCESSORY APPARATUS."
2. I was previously unnamed as an inventor of the application on the original  
Declaration.
3. The error in inventorship occurred without deceptive intent on my part.

DATED: 5/27/05

Jeffrey G. Herion



RULE 63 (37 CFR § 1.63)  
DECLARATION FOR PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

We, Michael G. Burkart and Jeffrey G. Herion, as a below named inventors, hereby declare that our residence, post office address and citizenship are as stated below next to our names, and we believe we are original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled "FENCE POST ACCESSORY APPARATUS", the specification of which has been prepared and filed on April 20, 2004, receiving Serial No. 10/828,937, and further identified as Attorney File No. 4902-5-1.

We hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. We acknowledge the duty to disclose information which is material to patentability in accordance with 37 CFR 1.56(a) and (b) as set forth on the attached sheet indicated Page 3 hereof and which we have read.

We hereby claim priority benefits under 35 U.S.C. 119(e) of any provisional application(s) for patent listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, we acknowledge the duty to disclose information material to patentability in accordance with 37 CFR 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

Provisional Applications:

Application Serial No.	Filing Date	Status
None		

We hereby claim foreign priority benefits under 35 U.S.C. 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s):

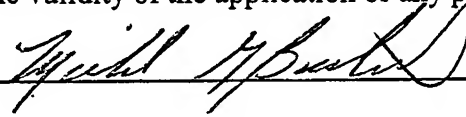
Number	Country	Filing Date dd/mm/yy	Priority Claimed	
			Yes	No
None			<input type="checkbox"/>	<input type="checkbox"/>

We hereby claim the benefit under 35 U.S.C. 120/365 of all United States and PCT international applications listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in such prior applications in the manner provided by the first paragraph of 35 U.S.C. 112, we acknowledge the duty to disclose information material to patentability in accordance with 37 CFR 1.56(a) and (b) which occurred between the filing date(s) of the prior application(s) and the national or PCT international filing date of this application:

PCT or U.S. Applications:

Application Serial No.	Filing Date	Status (patented, pending, abandoned)
09/974,101	October 10, 2001	Patented (US 6,722,637)
29/193,554	November 10, 2003	Patented (US D497,023)

We hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(1) Inventor's Signature  Date 5-27-05

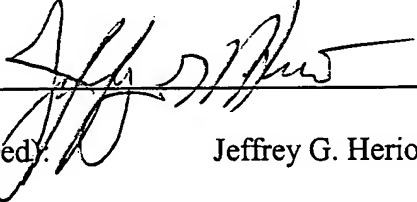
Inventor's Name (typed): Michael G. Burkart

Citizenship: U.S.A.

Residence: 20336 E. 47th Avenue  
Denver, Colorado 80249

Post Office Address\*: Same as Residence

\*Complete Post Office Address in full if different from Residence, otherwise indicate that the Post Office Address is "Same as Residence."

(2) Inventor's Signature  Date 5/27/05

Inventor's Name (typed): Jeffrey G. Herion

Citizenship: U.S.A.

Residence: 430 S. Bonnie Lane  
Watkins, Colorado 80137

Post Office Address\*: Same as Residence

\*Complete Post Office Address in full if different from Residence, otherwise indicate that the Post Office Address is "Same as Residence."

37 CFR §1.56(a) and (b)  
DUTY TO DISCLOSE INFORMATION MATERIAL  
TO PATENTABILITY

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of a patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.\*

\*Note, 37 CFR §1.97(h) states: "The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b)."